A

Tan Lae Peng v Khoo Thean San & Ors

B HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCC-67–06 OF 2024
ELAINE YAP JC
23 DECEMBER 2024

C *Companies and Corporations — Oppression — Oppression of minority — Whether minority shareholder had proven oppression by majority — Whether most appropriate remedy was to order majority to buy over minority's shareholding and order minority to forthwith cease being director and shareholder of company*

D The plaintiff was the wife of the first defendant ('D1'). The plaintiff, D1 and their son were the directors of the third defendant company ('D3'). D1 held 70% of the shares whilst the plaintiff held 19%, and their son 11%, of the shares in D3. Prior to incorporating D3, the plaintiff and D1 had carried on the business that D3 was in, as a partnership. After D3 was set up, the plaintiff E was tasked with handling the bank accounts of the company. When the relationship between the plaintiff and D1 soured — and the plaintiff left the matrimonial home and the parties began negotiating the terms for a divorce — the plaintiff complained that she was subjected to acts of oppression, unfair prejudice and disregard of her rights as a shareholder in D3. In her instant F originating summons ('OS') the plaintiff sought reliefs from oppression under s 346 of the Companies Act 2016 ('the CA'). Essentially, the plaintiff wanted the majority to buy out her shares in D3 at a price determined by an independent valuer and that she be paid all dividends, remuneration and allowances that were due to her as a director. The plaintiff claimed that: (a) D1 G had falsely claimed that she had resigned as a director and caused D3 to stop paying her director's salary, EPF and SOCSO contributions; (b) D1 had demanded that she return the bank token for D3's bank accounts although such matters were within her scope of management duties; (c) D1 and the company secretary had issued notice of an extraordinary general meeting H ('EGM'), purportedly approved by the board of directors, to remove her as director; (d) D1 had obtained payment of RM305,600 in dividends for the years 2019–2023 to the exclusion of the other shareholders without any board resolution for dividends to be paid; (e) D1 denied the plaintiff access to company documents including the accounting records; and (f) D1 had falsely I claimed that she committed criminal breach of trust when she drew her salary of RM6,600 in February and March 2024 using D3's cheque-book that was in her possession.

Held, allowing the OS:

(1) The plaintiff's contention that she was forced out of management was not credibly disputed. D1's majority power in D3 was exercised in violation of the conditions of fair play based on the several calculated steps that were taken to oust the plaintiff from the company. On balance of probabilities, the attempts to oust the plaintiff from D3 by excluding her from management and depriving her of the benefits she received as a director did take place and amounted to oppression of the plaintiff as a minority shareholder in the company (see paras 17–18).

(2) D3 was a quasi-partnership in which the plaintiff had a legitimate expectation to remain in management whilst she was a shareholder of the company. D1 was therefore liable under s 346 of the CA for the following conduct: (a) falsely claiming that the plaintiff had resigned as a director since November 2023 and causing D3 to stop paying her director's salary, EPF and SOCSO contributions; (b) demanding the return of the bank token for the company's bank accounts and removing her scope of management responsibilities; (c) causing the 28 May 2024 EGM notice to be issued, ostensibly by order of the board, to remove the plaintiff as director of D3; (d) denying the plaintiff access to documents of the company, including its accounting records; (e) falsely claiming that the plaintiff had committed criminal breach of trust when she drew her salary of RM6,600 in February and March of 2024 using the company's cheque book in her possession (see para 41).

(3) Although the parties agreed that their continued co-existence in the company was untenable, the court was not minded to wind up D3 as there was no assertion that the company was not commercially viable (see para 43).

(4) To redress the oppression complained of, it was, inter alia, ordered that: (a) the plaintiff forthwith cease to be director of D3 and relinquish all management rights in D3 and deliver up to D3 all company assets and records in her possession within 14 days; (b) D1 buy out the plaintiff's shares in D3 at the price prevailing at the date of this order as determined by an independent valuer appointed by this court from the list of names submitted by both parties; that both parties be equally liable to bear the valuer's costs of appointment and preparation of a valuation report after granting him/her access to all company documents and information as might be requested to undertake the valuation exercise; (c) D3 and its servants and agents be restrained from undertaking any exercise or transaction that had the effect of diluting the plaintiff's shareholding or diminishing the value of the company pending the completion of the valuation report; and (d) D1 cause D3 to pay the plaintiff her salary as director in the sum of RM6,600 per month (subject to deduction of EPF and SOCSO contributions) from March 2024 until the date of this order

and also to pay to the plaintiff's account the amount of EPF and SOCSO contributions due to her from February 2024 until the date of this order (see para 44).

(5) With regard to her complaint on the distribution and payment of dividends, the plaintiff had not proven a case of oppression. The evidence showed that the plaintiff had participated in the arrangement complained about and benefitted from it. She was aware that shareholder dividends were paid to D1 monthly as family income to enable him to defray their household expenses and to pay for their child's education. It was not proven that there existed any mutual understanding that her portion of the dividends would be paid back to her by D1. In any event, it was for the parties to carry out an accounting exercise in a different forum to ascertain what portion of the dividends declared and paid to D1 was used for the mutual benefit of both parties and what balance, if any, remained to be repaid to the plaintiff (see paras 20–21 & 23).

[Bahasa Malaysia summary

Plaintif adalah isteri kepada defendan pertama ('D1'). Plaintif, D1 dan anak mereka adalah pengarah syarikat defendan ketiga ('D3'). D1 memegang 70% saham manakala plaintif memegang 19%, dan anak mereka 11%, saham dalam D3. Sebelum penubuhan D3, plaintif dan D1 telah menjalankan perniagaan yang D3, sebagai perkongsian. Selepas D3 ditubuhkan, plaintif ditugaskan untuk mengendalikan akaun bank syarikat. Apabila hubungan antara plaintif dan D1 menjadi buruk — dan plaintif meninggalkan rumah tangga dan pihak-pihak mula merundingkan syarat perceraian — plaintif mengadu bahawa beliau telah mengalami tindakan penindasan, prejudis yang tidak adil dan pengabaian haknya sebagai pemegang saham dalam D3. Dalam saman pemula semasanya ('SP') plaintif memohon relif atas penindasan di bawah s 346 Akta Syarikat 2016 ('AS'). Pada asasnya, plaintif mahu majoriti membeli sahamnya dalam D3 pada harga yang ditentukan oleh penilai bebas dan beliau dibayar semua dividen, saraan dan elaun yang perlu dibayar kepadanya sebagai pengarah. Plaintif mendakwa bahawa: (a) D1 telah mendakwa secara palsu bahawa beliau telah meletak jawatan sebagai pengarah dan menyebabkan D3 berhenti membayarnya gaji pengarah, caruman KWSP dan PERKESO; (b) D1 telah menuntut beliau memulangkan token bank untuk akaun bank D3 walaupun perkara sedemikian adalah dalam skop tugas pengurusannya; (c) D1 dan setiausaha syarikat telah mengeluarkan notis mesyuarat agung luar biasa ('EGM'), kononnya diluluskan oleh lembaga pengarah, untuk memecatnya sebagai pengarah; (d) D1 telah memperoleh pembayaran dividen sebanyak RM305,600 untuk tahun 2019-2023 dengan mengecualikan pemegang saham lain tanpa sebarang resolusi lembaga untuk dividen yang akan dibayar; (e) D1 menafikan akses plaintif kepada dokumen syarikat termasuk rekod perakaunan; dan (f) D1 telah mendakwa secara palsu bahawa beliau melakukan pecah amanah jenayah apabila beliau mengeluarkan

gaji RM6,600 pada Februari dan Mac 2024 menggunakan buku cek D3 yang ada dalam simpanannya. A

Diputuskan, membenarkan SP:

(1) Pendapat plaintif bahawa beliau telah dipaksa keluar daripada pengurusan tidak dipertikaikan secara kredibel. Kuasa majoriti D1 dalam D3 telah dilaksanakan dengan melanggar syarat-syarat yang adil berdasarkan beberapa langkah kalkulatif yang diambil untuk menyingkirkan plaintif daripada syarikat. Berdasarkan imbangan kebarangkalian, percubaan untuk menyingkirkan plaintif daripada D3 dengan mengecualikan beliau daripada pengurusan dan melucuthakkan faedah yang beliau terima sebagai pengarah telah berlaku dan mengakibatkan penindasan plaintif sebagai pemegang saham minoriti dalam syarikat (lihat perenggan 17–18). B C

(2) D3 adalah perkongsian separa di mana plaintif mempunyai jangkaan yang sah untuk kekal dalam pengurusan semasa beliau adalah pemegang saham syarikat itu. Oleh itu, D1 bertanggungjawab di bawah s 346 AS untuk kelakuan berikut: (a) mendakwa secara palsu bahawa plaintif telah meletak jawatan sebagai pengarah sejak November 2023 dan menyebabkan D3 berhenti membayarnya gaji pengarah, caruman KWSP dan PERKESO; (b) menuntut pengembalian token bank untuk akaun bank syarikat dan mengalih keluar skop tanggungjawab pengurusannya; (c) menyebabkan notis EGM 28 Mei 2024 dikeluarkan, kononnya melalui arahan lembaga, untuk memecat plaintif sebagai pengarah D3; (d) menafikan akses plaintif kepada dokumen syarikat, termasuk rekod perakaunannya; (e) mendakwa secara palsu bahawa plaintif telah melakukan pecah amanah jenayah apabila beliau mengeluarkan gajinya sebanyak RM6,600 pada Februari dan Mac 2024 menggunakan buku cek syarikat dalam simpanannya (lihat perenggan 41). D E F G

(3) Walaupun pihak-pihak bersetuju bahawa kewujudan bersama mereka yang berterusan dalam syarikat itu tidak boleh dipertahankan, mahkamah tidak bercadang untuk menggulung D3 kerana tidak ada penegasan bahawa syarikat itu tidak bergerak maju secara komersial (lihat perenggan 43). H

(4) Untuk membetulkan penindasan yang diadukan, antara lain, diperintahkan supaya: (a) plaintif dengan serta-merta berhenti menjadi pengarah D3 dan melepaskan semua hak pengurusan dalam D3 dan menyerahkan kepada D3 semua aset dan rekod syarikat dalam simpanannya dalam masa 14 hari; (b) D1 membeli saham plaintif dalam D3 pada harga yang berkuat kuasa pada tarikh perintah ini sebagaimana yang ditentukan oleh penilai bebas yang dilantik oleh mahkamah ini daripada senarai nama yang dikemukakan oleh kedua-dua pihak; bahawa I

kedua-dua pihak bertanggungjawab sama untuk menanggung kos pelantikan penilai dan penyediaan laporan penilaian selepas memberikannya akses kepada semua dokumen dan maklumat syarikat seperti yang mungkin diminta untuk melaksanakan penilaian itu; (c) D3 dan pekerja dan ejennya dihalang daripada menjalankan sebarang pelaksanaan atau transaksi yang mempunyai kesan mencairkan pegangan saham plaintif atau mengurangkan nilai syarikat sementara menunggu laporan penilaian selesai; (d) D1 menyebabkan D3 membayar plaintif gajinya sebagai pengarah dalam jumlah RM6,600 sebulan (tertakluk kepada potongan caruman KWSP dan PERKESO) mulai Mac 2024 sehingga tarikh perintah ini dan juga membayar ke akaun plaintif jumlah caruman KWSP dan PERKESO yang perlu dibayar kepadanya dari Februari 2024 sehingga tarikh perintah ini (lihat perenggan 44).

(5) Berkenaan dengan aduannya mengenai pengagihan dan pembayaran dividen, plaintif tidak membuktikan kes penindasan. Keterangan menunjukkan bahawa plaintif telah mengambil bahagian dalam aturan yang diadu dan mendapat manfaat daripadanya. Beliau sedar bahawa dividen pemegang saham dibayar kepada D1 setiap bulan sebagai pendapatan keluarga untuk membolehkannya membiayai perbelanjaan isi rumah mereka dan untuk membayar pendidikan anak mereka. Ianya tidak terbukti bahawa wujud persefahaman bersama bahawa bahagian dividennya akan dibayar balik kepadanya oleh D1. Dalam apa jua keadaan, ia adalah untuk pihak-pihak untuk menjalankan latihan perakaunan dalam forum yang berbeza untuk memastikan bahagian dividen yang diisytiharkan dan dibayar kepada D1 digunakan untuk faedah bersama kedua-dua pihak dan baki, jika ada, yang masih perlu dibayar balik kepada plaintif (lihat perenggan 20–21 & 23).]

Cases referred to

Auspicious Journey Sdn Bhd v Ebony Ritz Sdn Bhd & Ors [2021] 3 MLJ 549, FC (refd)

Ebrahimi v Westbourne Galleries Ltd and others [1973] AC 360, HL (refd)

Hoy Pak Kwai (suing on behalf of himself and for the benefit of the company Aerial Product Industries Sdn Bhd) v Leong Kon Fah & Ors [2007] 1 MLJ 508; [2007] 1 CLJ 121, CA (refd)

Soh Jiun Jen v Advance Colour Laboratory Sdn Bhd & Ors [2010] 5 MLJ 342, CA (refd)

Tay Bok Choon v Tahansan Sdn Bhd [1987] 1 MLJ 433; [1987] CLJ Rep 24, PC (refd)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) s 181
Companies Act 2016 ss 245, 346

Chong Joo Tian (JT Chong Assoc) for the plaintiff.
Vianne Ang Ni Shan (Lee Sharon & Assoc) for the first and third defendants.
Ian Hannibal (Damien Chan, Hannibal & Ng Chambers) for the second defendant.

Elaine Yap JC:

INTRODUCTION

[1] The plaintiff filed this originating summons to seek remedies under s 346 of the Companies Act 2016 ('the CA') as a minority shareholder in the third defendant ('company') and under s 245 of the CA to seek access to company records.

[2] The plaintiff is one of the three directors of the company, the others being the first defendant who is her husband of about 33 years, and their son. The shareholders of the company are herself (19%), the first defendant (70%) and the son (11%). The second defendant is the company secretary.

[3] It is common ground that the company was incorporated on 18 September 2014 as a family-run company and that the plaintiff participated fully in its management before the facts that led to the filing of this originating summons. Essentially, the plaintiff is seeking an independent valuation and buyout order of her share in the company after she is paid all dividends, remuneration and allowances due to her.

ALLEGED ACTS OF OPPRESSION

[4] The animosity between the plaintiff and the first defendant emanated from their personal marital disputes. They separated in 2023 when the plaintiff moved out of the matrimonial home. The plaintiff claims the following acts of oppression, unfair prejudice and disregard of her rights as a shareholder:

(a) the first defendant falsely claimed that the plaintiff had resigned as a director since November 2023 and caused the company to stop paying her director's salary, EPF and SOCSO contributions;

(b) the first defendant demanded the return of the bank token for the company's bank accounts although accounts and banking were within the plaintiff's scope of management responsibilities, and she complied under a letter dated 6 February 2024;

(c) the first and second defendants caused to be issued, an EGM Notice dated 28 May 2024 ostensibly by order of the board, to remove the plaintiff as a director of the company;

(d) dividends in the sum RM305,600 (2019–2023) had been paid into the first defendant's account to the exclusion of other shareholders and without any resolution of the Board of Directors to declare dividends;

(e) the first defendant denied the plaintiff access to documents of the company, including accounting records; and

(f) the first defendant falsely claimed that the plaintiff committed criminal breach of trust ('CBT') and lodged a police report against her when she drew her salary of RM6,600 in February and March 2024 using the company's cheque book in her possession.

[5] Based on the material in the affidavits and submissions made by counsel, the issues for determination are as follows:

(a) whether the plaintiff has a legitimate expectation to remain in the management of the company as a director;

(b) whether the alleged acts amount to oppression, disregard of minority shareholder's interests, unfair discrimination or unfair prejudice ('oppression') under s 346 of the CA; and

(c) whether the company secretary is subject to s 346 of the CA as an officer or a third party.

ANALYSIS AND FINDINGS

Management rights attached to shareholding

[6] The plaintiff and the first defendant co-founded and managed the business of Salt Marketing together since 2010 before the company was set up. In the company, they continued to run the business together. There was an unwritten understanding that the plaintiff and first defendant had their respective roles as shareholders and working directors in the company.

[7] The evolution of a partnership into a company where the principals and now directors are spouses tends to militate in favour of a finding that the company is a quasi-partnership and I make that finding in this case.

[8] It may also be inferred that the plaintiff and first defendant used to have a relationship of mutual trust and confidence, and that the company was run on that basis. The undisputed evidence shows that the plaintiff was entrusted to operate the bank accounts of the company and handle its accounts, and the first defendant was paid all dividends declared to shareholders as family income used to pay for the expenses of the household and the children.

[9] In dealing with such companies, the court will subject the exercise of legal rights to equitable considerations if it is unjust, or inequitable, for one to insist on legal rights, or to exercise them in a particular way. This jurisprudence was established in *Ebrahimi v Westbourne Galleries Ltd and others* [1973] AC 360 and such companies are sometimes referred to as 'Ebrahimi' type companies.

[10] The first defendant concedes that the company is an 'Ebrahimi' type company but submitted that the plaintiff should nevertheless have no legitimate expectation to remain in her management role, citing cases like *Soh Jiun Jen v Advance Colour Laboratory Sdn Bhd & Ors* [2010] 5 MLJ 342.

[11] One of the features of an 'Ebrahimi' type company is that the shareholders have a say in the management of the company's business ie the management rights of the directors are attached to their shareholding. Thus, cases involving the removal of a director/shareholder in companies that are not quasi-partnership are distinguishable.

[12] On the facts of this case, this court finds that the plaintiff's assertion that she expected to remain in the management of the company as a director while she remained as a shareholder was a legitimate one.

OPPRESSION

Removal from management position

[13] The first defendant takes the position that the plaintiff had resigned as a director in November 2023, progressively handed over her duties to the company's staff and served her notice which ended in January 2024 at which time the plaintiff ceased any involvement with the company. In other words, the first defendant is saying that the plaintiff had voluntarily relinquished her rights.

[14] According to the plaintiff, she did offer to resign from the company but withdrew that offer. The parties were in the midst of negotiating the terms of their impending divorce. The plaintiff contends that the first defendant had acted unreasonably and abused his position in the company. She was asked to handover the bank token and instructions to deal with company's EPF and SOCSO payments.

[15] There is no documented evidence of the alleged resignation, voluntary or otherwise. There were indeed active settlement negotiations in letters exchanged between solicitors representing the parties, which terms indicated that the plaintiff wished to remain in the company. In one such letter dated

11 January 2024, it was a term proposed by the plaintiff that she:

> the Wife shall have the right to remain as a Director of Salt Marketing Sdn Bhd (Company No: 1109533-D) ('SMSB') with her full entitlements to the Director's fee and other existing benefits as a director thereof (including the use of the Vehicle with Registration No: VHN 3713 (Mazda CX30 model) with the full upkeep (including but not limited to the costs of insurance, petrol, repairs and maintenance) to be borne by SMSB for so long as she remained as a director and/or shareholder of SMSB.

[16] There was no apparent consideration for the plaintiff to have relinquished her position and financial entitlement in the company. The subsequent conduct of the first defendant in calling for an EGM on 28 May 2024 to remove the plaintiff as a director also contradicts the first defendant's stand that the plaintiff had voluntarily resigned in November 2023.

[17] The plaintiff's contention that she was forced out of management is therefore not credibly disputed. The first defendant's majority power in the company was exercised in violation of the conditions of fair play based on the several calculated steps taken to oust the plaintiff from the company.

[18] On a balance of probabilities, the events recited (in para [4](a), (b) and (c) above) concerning the attempts to oust the plaintiff from the company by excluding her from management and depriving her of the benefits she received as a director, did take place and amounted to oppression of the plaintiff as a minority shareholder of the company.

Distribution and payment of dividends

[19] The plaintiff claimed that in the midst of her dispute with the first defendant, the second defendant delivered documents pertaining to the dividends declared by the company from 2019 to 2023. The accusation appears to be that the first defendant was looking to whitewash the payment of dividends totalling RM305,600 to himself without board resolution.

[20] When challenged, the plaintiff did not deny knowledge that the shareholder dividends were paid into the personal account of the first defendant and that the intent behind this was to enable him to defray household expenses and the children's education. According to the plaintiff however, it was a 'mutual understanding' that her portion would be paid back to her by the first defendant.

[21] This court finds that the plaintiff had overstated this allegation of oppression. There is no response to the point made that according to the accounting records that she had purview over in her role at the company,

shareholder dividends were paid monthly to the first defendant as family income for the following joint liabilities:

(a) RM4,500 monthly as housing loan repayment for the matrimonial home at No 10 Jalan Ubin U8/19G, Bukit Jelutong, 40150 Shah Alam, Selangor which the plaintiff and the first defendant owned jointly;

(b) RM27,500 annual university fees for their daughter for three years; and

(c) other household expenses.

[22] Per Lord Templeman in *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433; [1987] CLJ Rep 24:

> At the end of the day the judge must decide the petition on the evidence before him. If allegations are made in affidavits by the petitioner and those allegations are credibly denied by the respondent's affidavits, then in the absence of oral evidence or cross-examination, the judge must ignore the disputed allegations. The judge must then decide the fate of the petition by consideration of the undisputed facts.

[23] Based on the plaintiff's conduct in the four years before the relationship soured, it is not proven that there existed any mutual understanding that her portion would be paid back to her by the first defendant. As far as a claim of oppression goes, the plaintiff has failed to make her case on this point because she participated in the arrangement complained about and benefited from it.

[24] Ultimately, it is for the parties to carry out an accounting exercise in a different forum to ascertain what portion of the dividends declared and paid to the first defendant was used for the mutual benefit of both parties and what balance remains to be repaid to the plaintiff, if any.

Denial of access to company's documents

[25] In relation to her exclusion from management and attempted removal as a director, the plaintiff contended that the first defendant had denied her access to the company's documents by giving instructions to employees of the company to that effect, and by disregarding her solicitor's demand on 20 May 2024 that the plaintiff be allowed access to inspect the company's documents and information.

[26] As a director, the plaintiff is entitled to have access to the company's documents and information. The first defendant does not deny this and has stated that she was never denied access while she was the director. The entire plank of the first defendant's defence hinged on the contention that she had resigned as a director.

[27] Based on this court's finding in the previous section, it follows that the first defendant's act of disregarding the plaintiff's request through her solicitors for access to the company's documents and information constituted part of the oppression.

False accusation of CBT

[28] The plaintiff contended that the first defendant had falsely accused her of committing CBT and lodged a police report against her when she drew her salary of RM6,600 in February and March 2024 using the company's cheque book in her possession. The accusation and threat was documented in a Whatsapp message dated 2 April 2024 from the first defendant:

> If you read this message, I need you to understand that you have done something which is CBT by stealing company money and if I report to the police you can be charged ...

[29] The first defendant denied that he lodged a police report. As with the previous allegation, the first defendant's defence was that she was not entitled to any directors' fees after she resigned. This court finds that the threat was calculated to intimidate the plaintiff to relinquish her claims, and that this is an exercise of the first defendant's power as a director in a manner which is oppressive to the plaintiff.

Alleged oppression by a company secretary

[30] The second defendant was appointed as company secretary since 1 June 2021. The only act of oppression that the second defendant was implicated in was the preparation and issuance of the EGM notice on 28 May 2024 to remove the plaintiff as a director. The second defendant was accused of colluding with the first defendant in the impugned act of removing plaintiff as a director.

[31] As a point of law, it was contended that the company secretary cannot be named as a co-defendant in a s 346 of the CA action other than as a 'third party'. Relying on the Federal Court decision in *Auspicious Journey Sdn Bhd v Ebony Ritz Sdn Bhd & Ors* [2021] 3 MLJ 549 ('Auspicious Journey') counsel for the second defendant drew some significance to the test set out by the court to implicate a 'third party' in an oppression claim.

[32] The plaintiff takes the position that where s 346 of the CA refers to the act or threatened act of the company, it necessarily implicates all other officers including the company secretary as the company can only act through their human agents. Accordingly, counsel for the plaintiff contended that the second defendant is not a 'third party'.

[33] On a review of *Auspicious Journey*, I agree that the company secretary is a third party in an oppression claim. Section 181 of the Companies Act 1965 (now s 346 of the CA) refer to two limbs:

(a) conduct of the affairs of the company or exercise of the powers of the directors; and

(b) some act of the company or some resolution of the members.

[34] The issue addressed in *Auspicious Journey* was whether liability devolves to directors personally. In that context, the Federal Court explained:

> [84] ... s 181 contemplates the 'affairs of the company' and 'acts of the company' from two vantage points. Firstly, at the management level which must encompass the directors. And secondly at the shareholder level. This bears out the fact that while the company is a separate legal entity, it comprises two distinct organs, ie, the board of directors and the members/shareholders respectively. Section 181 therefore targets conduct or acts of the company at both the directors and shareholders' levels. Bearing in mind that the statute seeks resolution for a dispute inter se, as opposed to a dispute from a third party outside of the company, such a construction is legally rational and coherent.

[35] A company secretary has a very distinct role from that of a director even though they are both officers. It is not the purview of the company secretary to play any part in the 'conduct of the affairs of the company' in the context of s 346 of the CA. Those are matters which fall within management duties and the powers of directors. Thus a company secretary falls outside limb (a). A company secretary also falls outside limb (b) as the reference to the acts of the company in limb (b) is a reference to the acts of the company as a separate entity through its majority shareholders.

[36] In any case, the case against the second defendant did not turn on whether she is an officer or a third party. The remedies sought against the second defendant comprised the injunction which is academic for the reasons that will become apparent, and monetary payments which bear no nexus to the second defendant's role or alleged actions.

[37] On the facts, the second defendant claims to have been unaware of the marital disputes between the plaintiff and first defendant and had acted on the instructions of the directors individually as if they were instructions from the Board as a matter of practice. As an example, the second defendant cited preparing a resolution to take up a banking facility from CIMB Bank for RM2.37m on the sole instruction of the plaintiff.

[38] The plaintiff contended that the issuance of an EGM notice for removal of a director is out of the ordinary. All other business of the Board of Directors were prepared via circular resolution. Circular resolutions were circulated to all directors for execution.

[39] This court finds that the sting of the act complained of is that the second defendant took an instruction from the first defendant alone as an instruction from the board of directors. This court sees no good reason to draw any distinction in the nature of the instructions given, whether by the plaintiff or the first defendant, as long as they were within the purview of the company secretary to execute as part of her function.

[40] The company secretary was not expected to know what is contentious and what is not between the plaintiff and first defendant. There is no basis to suggest that the company secretary should exercise independent judgment to comply with some instructions and not others ie in this case, to disregard the instruction of the first defendant.

CONCLUSION AND REMEDIES

[41] In conclusion, this court has found that the company is a quasi-partnership in which the plaintiff had a legitimate expectation to remain in management while she is a shareholder of the company. The first defendant therefore liable under s 346 of the CA for the following conduct:

(a) falsely claiming that the plaintiff had resigned as a director since November 2023 and causing the company to stop paying her director's salary, EPF and SOCSO contributions;

(b) demanding the return of the bank token for the company's bank accounts and removing her scope of management responsibilities;

(c) causing to be issued, an EGM Notice dated 28 May 2024 ostensibly by order of the board, to remove the plaintiff as a director of the company;

(d) denying the plaintiff access to documents of the company, including accounting records; and

(e) falsely claiming that the plaintiff committed CBT when she drew her salary of RM6,600 in February and March 2024 using the company's cheque book in her possession.

[42] This court notes that as the EGM was objected to, the meeting scheduled for 21 June 2024 was called off on 10 June 2024 and the injunction sought to restrain it has become academic.

[43] However, the parties agree that their continued co-existence in the

company is untenable. Based on *Hoy Pak Kwai (suing on behalf of himself and for the benefit of the company Aerial Product Industries Sdn Bhd) v Leong Kon Fah & Ors* [2007] 1 MLJ 508; [2007] 1 CLJ 121 however, the court is not minded to wind up a commercially viable enterprise and there is no assertion that the company is not commercially viable.

[44] To redress the oppression complained of, the court will instead grant the following orders by reference to the paragraphs in the originating summons (to be renumbered sequentially in the order to be drawn up):

(7) an order that an independent valuer ('said Independent Valuer') be appointed by this Honourable Court to carry out a fair valuation of the Plaintiff's shares in the 3*rd* Defendant ('Company') at the date of this Order or at any other date as the Court deems just and to prepare a Valuation Report for submission to this Honourable Court; To that end, the parties are to notify the court of their respective candidate Independent Valuer (with confirmation of consent and willingness to act within the parameters of this Order, detailed profile and fee quote) *by way of an affidavit to be filed within 4 weeks from the date of this Order*, and such Independent Valuer is directed to carry out a valuation of the shares of the Company as at the date of this Order; and prepare a Valuation Report within 3 months from the date of the appointment. The method of valuation, assumptions, and final valuation shall be final, conclusive and binding on the parties.

(8) varied as follows: an order that the costs of appointing the said Independent Valuer and the preparation of the said Valuation Report be borne in equal shares by the Plaintiff and the 1st Defendant personally, and that the Plaintiff and the 1st Defendant undertake to furnish to the said Independent Valuer, timely access to all Company documents and information as may be requested to undertake the valuation exercise and complete it within the timeframe ordered above.

(9) an order that the 1st Defendant shall purchase and pay for all the shares of the Plaintiff in the 3*rd* Defendant at the price as determined by the said Independent Valuation Report within seven (7) days of the date of the said Valuation Report to the Plaintiff's solicitors to hold as stakeholders, subject to the prior lodgment by the Plaintiff of a pre-signed transfer form for the transfer of the shares to the 1st Defendant or his nominee with the Company secretary. The Company secretary shall thereupon take all necessary steps to effect the transfer of the shares upon written notice from the Plaintiffs solicitors that the purchase price has been received. The Plaintiffs solicitors shall on the same date of issuance of such notice, and not before that, release the purchase price to the Plaintiff.

(10) varied as follows: an Order restraining the Company whether by itself or its servants and/or agents, from undertaking any corporate exercises that has the effect of diluting the Plaintiff's shareholding or any transactions outside the ordinary day to day business of the Company that has the effect of diminishing the value of the Company pending completion of the Valuation Report.

(4) varied as follows: an Order that the 1st Defendant shall cause the Company to pay to the Plaintiff her salary as a director of the Company in the amount of RM6,600.00 per month (subject to deduction of EPF and SOCSO contributions)

commencing from March 2024 until the date of this Order within 14 days from the date of this Order, with interest accruing thereafter at the rate of 5% per annum until full payment.

(5) varied as follows: an Order that the 1st Defendant shall cause the Company to pay to the Plaintiff's account, the amount of EPF and SOCSO contributions relating to the Plaintiff's salary commencing from the month of February 2024 until the date of this Order within 14 days from the date of this Order, with interest accruing thereafter at the rate of 5% per annum until full payment.

(6) varied as follows: an Order that the Plaintiff ceases to be a director of the Company and relinquishes all management rights in the Company as at the date of this Order, whereupon the Plaintiff shall deliver up to the Company, all Company assets and records in her possession within 14 days from the date of this Order.

(14) the parties are at liberty to apply for other and/or further orders.

(00) Costs of this action in the sum of RM20,000.00 to be paid by the 1st Defendant to the Plaintiff; and in the sum of RM5,000.00 to be paid by the Plaintiff to the 2nd Defendant.

OS allowed.

Reported by Ashok Kumar